Supreme Court of the United States.

No. 54.—October Term, 1905.

John D. Jack, Plaintiff in Error, vs. The State of Kansas. } In error to the Supreme Court of the State of Kansas.

[November 27, 1905.]

The plaintiff in error seeks to review the judgment of the Supreme Court of the State of Kansas, affirming a judgment against him of imprisonment for contempt, entered by direction of the District Court of Shawnee County, in that State. The plaintiff in error had been duly subpœnaed as a witness to appear before the above-mentioned District Court and was examined before that court under and by virtue of the provisions of section 10 of chapter 265 of the Laws of Kansas of 1897. (Gen. Stat. 1901, sec. 7873.) The statute is known as the Kansas Anti-trust Act. Section 10 is reproduced in the margin.*

The proceeding was commenced in September, 1903, by the Attorney General and County Attorney of Shawnee County, and those officers presented to the court their verified application, informing it of the existence of combinations of persons engaged in the operation of coal mines in Osage

*Section 10, being section 7873, General Statutes 1901, reads:

"The several District Courts of this State and the judges thereof shall have jurisdiction, and it shall be their duty, upon good cause shown and upon written application of the County Attorney or the Attorney General, to cause to be issued by the clerk of said court subpœnas for such witnesses as may be named in the application of a County Attorney or Attorney General, and to cause the same to be served by the sheriff of the county where such subpœna is issued; and such witnesses shall be compelled to appear before such court or judge at the time and place set forth in the subpœna, and shall be compelled to testify as to any knowledge they may have of the violations of any of the provisions of this act; and any witness who fails or refuses to attend and testify shall be punished as for contempt, as provided by law. Any person subpœnaed and examined shall not be liable to criminal prosecution for any violation of this act about which he may testify. Neither shall the evidence of any such witness be used against him in any criminal proceeding. The evidence of all witnesses so subpœnaed shall be taken down by the reporter of said court, and shall be transcribed and placed in the hands of the County Attorney or the General Attorney, and he shall, in the proper courts, at once prosecute such violator or violators of this act as the testimony so taken shall disclose. Witnesses subpœnaed as provided for in this section shall be compelled to attend from any county in the State."

County to fix the price of coal at the mines, and the price to be charged to purchasers; that the members of the combination met at a place in Shawnee County monthly to fix the minimum price to be charged for coal, and that they would not sell coal for less than the minimum price so fixed, and that the agreements thus entered into were by them carried out and executed. The plaintiff in error was engaged in operating a coal mine in Osage County, and was named in the application as one who had a knowledge concerning the existence of the combination, and a subpœna was thereupon asked for to be served upon him. The district judge granted the application. The subpœna was duly served, and the plaintiff in error appeared pursuant thereto before the district judge and answered some questions that were propounded him by the Attorney General or County Attorney. Other questions were put to him in relation to his knowledge of the meetings, and as to the existence of any agreement between the operators of the coal mines of Osage County, and with regard to the fixing of the price of coal to be sold to residents and citizens of Kansas. The plaintiff in error refused to answer these questions and assigned reasons for such refusal at some length, but the chief ground now relied on in this court as forming a Federal question is that the statute violated the Fifth and Fourteenth Amendments of the Federal Constitution; that the statute did not furnish a broad enough indemnity, and the judgment of imprisonment deprived him of his liberty without due process of law.

The court held that the excuses given for declining to answer were insufficient, and thereupon instructed and directed the witness to answer the questions propounded to him, but he still refused to do so. Whereupon the court found him guilty of a direct contempt of court in refusing to answer the questions, and ordered that he be committed to the jail of Shawnee County until he should answer them, but not beyond a period of thirty days.

The plaintiff in error then appealed from the judgment rendered against him to the Supreme Court, where it was affirmed in May, 1904. To review that judgment of affirmance the plaintiff has brought the case here by writ of error.

Mr. Justice PECKHAM, after making the foregoing statement, delivered the opinion of the Court.

The Supreme Court of Kansas has held in this case that the statute under which the plaintiff in error was sentenced to be imprisoned for a contempt of court was a valid statute, and did not violate either the constitution of the State or of the Federal Government.

One portion of the statute in question has already been passed upon by this court and decided to be a valid provision as construed by the State

court. (*Smiley* v. *Kansas*, 196 U. S. 447.) The decision in that case has no application to the section involved herein.

It is contended on the part of the plaintiff in error that the court below denied to him the protection of section 10 of the Bill of Rights of the Constitution of Kansas, and also denied to him the benefit of the provision of the Fifth Amendment to the Constitution of the United States, that no person should be compelled, in any criminal case, to be a witness against himself, and also that he has been deprived of the benefit of the Fourteenth Amendment. We are bound by the decision of the Supreme Court of Kansas that the statute in question violated no provision of the Constitution of that State, and that it was a valid statute so far as that instrument was concerned. This doctrine is familiar, and a few of the many cases upon the subject are cited in *Smiley* v. *United States*, (196 U. S. *supra*.)

It has been so frequently held, as not to warrant the citation of many authorities, that the first ten amendments to the Federal Constitution operate on the National Government only, and were not intended to, and did not, limit the powers of the States in respect to their own people. (*Spiess* v. *Illinois*, 123 U. S. 131; *Brown* v. *New Jersey*, 175 U. S. 172, 174.) That portion of the Fifth Amendment, therefore, already cited, has no application in a proceeding like this, in a State court, under a State statute.

The plaintiff in error, however, contends that the denial of his claim of right to refuse to answer the questions was in violation of the Fourteenth Amendment to the Constitution of the United States, and deprived him of his liberty without due process of law. This, in reality, is the sole question in the case. He contends that the immunity granted by the State statute, while enforcing the giving of testimony which may incriminate the party interrogated, as a violator of that statute, is not (and could not be) broad enough to provide immunity from prosecution under the Federal anti-trust statute, and that compelling him to answer questions under such circumstances, which might incriminate him as a violator of the Federal anti-trust statute, and upon his refusal condemning him to imprisonment, deprived him of his liberty without due process of law, within the meaning of the Fourteenth Amendment, and the statute is therefore void. The State statute could not, of course, prevent a prosecution of the same party under the United States statute, and it could not prevent the testimony given by the party in the State proceeding from being used against the same person in a Federal court for a violation of the Federal statute, if it could be imagined that such prosecution would be instituted under such circumstances. Is this fact fatal to the proceeding? We think not. Assuming for this purpose that if the statute failed to give sufficient immunity from prosecution or punishment, it would

violate the Fourteenth Amendment, and that an imprisonment by virtue of the statute would be depriving the witness of his liberty, without due process of law, we come to an examination of the extent of the immunity in this case.

The question has been before this court in cases somewhat similar to this, although they arose under Federal statutes. In *Counselman* v. *Hitchcock*, (142 U. S. 547,) the immunity provided for by section 860 of the Revised Statutes was held not to be broad enough to enable the prosecution to insist upon an answer from the witness. In the subsequent case of *Brown* v. *Walker*, (161 U. S. 591,) the statute there involved was held to afford complete immunity to the witness, and he was therefore obliged to answer the questions that were put to him, although they might tend to incriminate him. In that case it was contended, on the part of the witness, that the statute did not grant him immunity against prosecutions in the State courts, although it granted him full immunity from prosecution by the Federal Government. This contention was held to be without merit. While it was asserted that the law of Congress was supreme, and that judges and courts in every State were bound thereby, and that therefore the statute granting immunity would probably operate in the State as well as in the Federal courts, yet still, and aside from that view, it was said that while there might be a bare possibility that a witness might be subjected to the criminal laws of some other sovereignty, it was not a real and probable danger, but was so improbable that it needed not to be taken into account.

The Supreme Court of Kansas has held in this case that in the proceeding under the section in question the witness can only be asked material questions relating to information regarding any alleged violation of the statute relating to transactions within the State, and that it would not be material, and consequently not permissible, to ask a witness in relation to matters of interstate commerce, which might constitute a violation of the Federal anti-trust act. Therefore, the opinion continued, if in the course of an examination properly made, in regard to transactions within the State, information should incidentally be given which might possibly be used in a prosecution under the Federal act; such possible prosecution did not operate as a reason for permitting the witness to refuse to answer; that it could not be presumed that under such circumstances any Federal prosecution would ever take place, and that it was, within the reasoning of *Brown* v. *Walker*, *supra*, a danger so unsubstantial and remote that it was not necessary (as it was impossible) for the statute to provide against it. We regard this as a sound view. We do not believe that in such case there is any real danger of a Federal prosecution, or that such evidence would be availed of by the Government for such purpose. We

think the legal immunity is in regard to a prosecution in the same jurisdiction, and when that is fully given it is enough. The principles underlying the provision itself have been thoroughly treated in the above cited cases, and it would be out of place to here renew their discussion.

We are of opinion that no Federal right of the plaintiff in error has been violated, and the judgment of the Supreme Court of Kansas must, therefore, be

Affirmed.

Mr Justice BREWER and Mr. Justice MCKENNA dissented.

True copy.

Test:

Clerk Supreme Court, U. S.